

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL MISC.APPLICATION No 339 of 1996

For Approval and Signature:

Hon'ble MR.JUSTICE N.N.MATHUR

- =====
1. Whether Reporters of Local Papers may be allowed to see the judgements?
 2. To be referred to the Reporter or not?
 3. Whether Their Lordships wish to see the fair copy of the judgement?
 4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
 5. Whether it is to be circulated to the Civil Judge?

VIKRAMSINH CHAITANYASINH CHUDASMA

Versus

STATE OF GUJARAT

Appearance:

MR AD SHAH for Petitioners
Mr M A Bukhari, APP for respondent No.1
MR HARIN P RAVAL for Respondent No. 2

CORAM : MR.JUSTICE N.N.MATHUR

Date of decision: 04/02/97

ORAL JUDGEMENT

The petitioners by way of this application under section 482 of the Cr.P.C., seek direction to quash Criminal case No.6979 of 1995 pending in the Court of Chief Judicial Magistrate, Surendranagar under sections 406, 504, 506(1)/34 of I.P.C.

2. Brief facts giving rise to the present application are that non-applicant-Prafullakumari Surendrabhai Jadeja, filed a complaint on 16.10.1995 in the court of Chief Judicial Magistrate, Surendranagar stating, inter-alia, that she was married at Surendranagar on 17.5.1989 with accused No.1-Vikramsingh C Chudasama. Accused No.2-Dharmendrasinh C Chudasama and accused No.3-Ranjanba C Chudasama are the brother and mother of accused No. 1 respectively. It is alleged that at the time of marriage, the complainant's father and mother had given her precious ornaments of gold and silver according to the customs of Darbar community worth Rs.7 lakhs including precious furniture and other household items and further the gifts received from friends and relatives. A copy of the list of articles has been attached with the complaint. It is asserted that the said property is 'streedhan' of the petitioner. It is also alleged that the accused No.3 had started mental torture to the complainant for giving dowry not upto their standard. She was also harassed by her husband. On 16.10.1990, she had gone to her in-law's house with her parents and brother. The accused persons did not allow her to enter in the house and she was insulted. It is further stated that on 17.6.1995, she had gone to the court at Bhavnagar to attend the divorce proceedings initiated by her husband. After the court proceedings, the accused persons forced her to agree for consent divorce which she declined. She was thus threatened and abused in filthy language. It is also stated that her precious things will also not be returned. From this act, it appears that the Streedhan of the petitioner worth Rs. 7 lakhs will not be returned to her as per the criminal intention expressed by the accused persons. On this complaint, the learned Magistrate issued a process to the petitioners for offences under sections 406, 504, 506(1)/34 of I.P.C.

2. It is contended by Mr A D Shah, learned Advocate for the petitioner that the reading of the complaint clearly shows that the cause of action had arisen at Bhavnagar, and therefore, the court at Surendranagar has no jurisdiction. Admittedly, according to the complaint, she was compelled to leave the house at Bhavnagar on 16.10.90, and the incident of 17.6.95 took place at Bhavnagar. On the other hand, Mr P M Raval, learned Sr.Counsel appearing for the non-applicant submits that the cause of action for offence under section 406 has arisen at Surendranagar, inasmuch as in the complaint, it is clearly mentioned that Streedhan was entrusted to the husband and the other family members on 17.5.1989 at Surendranagar. In my view, the contention of Mr Shah

cannot succeed in view of the plain reading of the complaint. It is true that offence under section 504 and 406 was taken at Bhavnagar but in view of the provision of section 178(d), offence can be enquired or tried by the court having jurisdiction where one of the offences is alleged to have been committed. In view of the entrustment of Streedhan at Surendranagar, cause of action arose at Surendranagar for offence under section 406 of the I.P.C.

3. It is next contended by Mr A D Shah that so far as the offence under section 406 is concerned, it is barred by limitation in view of section 468 of the Cr.P.C. In this regard, it is submitted by Mr Raval that the intention was not to return the 'streedhan' and as such limitation is to be computed from 17.6.95. The question of limitation raised, in the facts of the case is a mixed question of law and fact and thus, it cannot be decided at this stage.

4. It lastly contended by Mr Shah that so far as accused No.2 and 3 are concerned, there is absolutely no evidence worth the name in the complaint to connect them with the alleged crime. I have carefully gone through the complaint. Of course some reference has been made to accused No.2 and 3 but there is no allegation that the streedhan was entrusted to them. There is also no allegation that they had participated in the incident of 17.6.1995. It is contended Mr Raval that it is entirely a matter of evidence and everything cannot be stated in the complaint. I am not satisfied with the submission made by Mr Raval. The learned Magistrate, while issuing process under section 204 ought to have seen the complaint and if no offence is made out, it was not obligatory for him to issue process against accused No.2 and 3 for offence under section 406, 506/34 of IPC.

5. In view of the aforesaid this Misc. Criminal Application is partly allowed. The order of the learned Chief Judicial Magistrate, Surendranagar dated 16.10.1995 is quashed to the extent of issuing process against petitioners No.2-Dharmendrabhai C Chudasama and petitioner No.3-Ranjanba. It is however, made clear that if during the trial, there appears any evidence against the accused petitioners No.2 and 3 and if the facts so warrant, this order will not come in way for taking appropriate action under section 319 of the Cr.P.C.

Rule made absolute to the aforesaid extent.

